

EXHIBIT 3

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE COLLEGE ATHLETE NIL
LITIGATION

Case No. 4:20-cv-03919-CW

**DECLARATION OF ERIC D. BENTLEY
IN SUPPORT OF JOINT
ADMINISTRATIVE OMNIBUS MOTION
TO SEAL**

1 I, Eric D. Bentley, declare as follows:

2 I am the Vice Chancellor and General Counsel at Texas Tech University (“Texas Tech”).
 3 Texas Tech is a member of the Big 12 Conference, which is a defendant in this action. I make this
 4 Declaration based on my personal knowledge and investigation, and if called as a witness to testify,
 5 I could and would testify competently to the facts set forth herein.

6 1. This Declaration is being made in support of the Joint Administration Omnibus
 7 Motion to Seal (“Motion”), and pursuant to Civil Local Rules 7-11 and 79-5.

8 2. Texas Tech seeks to maintain the confidentiality of certain portions of documents
 9 filed under seal by the Parties that reflect Texas Tech’s highly sensitive, non-public, recent
 10 financial information and/or contain or reflect confidential personal information of individual
 11 student-athletes.

12 3. Specifically, Texas Tech requests that certain portions of the Expert Reply Report
 13 of Daniel A. Rascher (“Rascher Reply Report”) and the Expert Report of Catherine Tucker, Ph.D.
 14 (“Tucker Report”), as described below and as identified in the Proposed Order Regarding Joint
 15 Administrative Omnibus Motion to Seal (“Proposed Order”) as entry numbers 792, 794, 795, 797,
 16 and 539 be maintained under seal.

17 4. A party seeking to file a document under seal must “establish that a document, or
 18 portions thereof, are sealable.” Civil L.R. 79-5(c). A party seeking to avoid disclosure of
 19 confidential, proprietary, or otherwise protected documents must demonstrate “compelling
 20 reasons” to seal where the motion is “more than tangentially related to the merits of the case.”
 21 *Adtrader, Inc. v. Google LLC*, No. 17-cv-07082-BLF, 2020 WL 6391210, at *2 (N.D. Cal. Mar.
 22 24, 2020). Courts in this district generally regard motions for class certification as “more than
 23 tangentially related to the merits of the case” and therefore, subject to the “compelling reasons”
 24 standard. *See e.g., IntegrityMessageBoards.com v. Facebook, Inc.*, No. 18-cv-05286-PJH, 2021
 25 WL 3771785, at *21 (N.D. Cal. Aug. 24, 2021). The standard is met if the designating party can
 26 “articulate compelling reasons supported by specific factual findings” for the need to seal a
 27 document. *Opperman v. Path*, No. 13-cv-00453, 2017 WL 1036652, at *1 (N.D. Cal. Mar. 17,
 28 2017) (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006)).

Redactions, instead of complete removal, can be used to place “limited and clear” portions of information outside the public record. *Kamakana*, 447 F.3d at 1183.

5. Texas Tech can demonstrate that compelling reasons exist to maintain the following narrowly tailored redactions under seal.

CONFIDENTIAL STUDENT INFORMATION

6. The Rascher Reply Report (ECF No. 290-2) reflects confidential personal information of Texas Tech’s student-athletes. Texas Tech is required to keep confidential personal student information, and such information may not be disclosed to the public without first obtaining a release from the student or parent, as FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. 1232g) requires. *See Rosenfeld v. Montgomery Cnty. Pub. Sch.*, 25 F. App’x 123, 132 (4th Cir. 2001) (“[T]he district court should consider FERPA in making its determination whether sealing of the documents in question is appropriate.”).

7. Specifically, Texas Tech student-athletes have reported to Texas Tech information about their name, image, and likeness (“NIL”) agreements, and Texas Tech produced information about those agreements in response to a subpoena in this litigation. The information that Texas Tech produced contains confidential personal student information related to student-athletes’ NIL agreements.

8. Therefore, Texas Tech supports the Parties’ Motion to redact those portions of the Rascher Reply Report, which contain information derived from the personal information of Texas Tech student-athletes, as identified below and in the Proposed Order:

Entry Number	Text to be Sealed
792.	p. 18 ¶ 30
794.	p. 18 ¶ 30
795.	p. 18 ¶ 30
797.	p. 18 n. 43

9. The limited redactions proposed above are narrowly tailored, and seek to seal confidential information derived from individual Texas Tech student-athletes’ information, the

public disclosure of which would be inconsistent with Texas Tech’s confidentiality obligations as related to these student-athletes and would harm such third-party individuals.

CONFIDENTIAL INSTITUTIONAL FINANCIAL INFORMATION

10. As an NCAA member institution, Texas Tech submits certain confidential financial information to the NCAA, which is collected for the purpose of informing its membership of aggregate facts and trends relating to athletic revenue and expenses. The NCAA does not publish or share, nor do its member institutions publish or share, information that would permit these aggregate revenue categories to be broken down further, or to be used to identify revenue trends that are not aggregate (*i.e.*, revenue trends for specific conferences or schools). This data is submitted under express guarantees of confidentiality and is not released to either the public or other NCAA members on a conference-specific or school-specific basis. The NCAA’s member institutions provide the Confidential NCAA Member Financial Data to the NCAA in reliance on the guarantee of confidentiality.

11. The Tucker Report contains information that reflects the details of the proportion of total revenues attributed to football, men’s basketball, and women’s basketball at Texas Tech. Texas Tech would be harmed by the disclosure of revenue attributions, as it would reveal non-public information regarding Texas Tech’s financial information and decisions to other NCAA members and other competitors. *See Murphy v. Kavo Am. Corp.*, No. 4:11-CV-0410-YGR, 2012 WL 1497489, at *2 (N.D. Cal. Apr. 27, 2012) (A “compelling reason” exists to seal confidential business information that reveals a company’s “sales growth and decline,” such as financial data.); *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978).

12. Therefore, Texas Tech supports the Parties’ Motion to redact those portions of the Tucker Report, which contain Texas Tech’s confidential financial information, as identified below and in the Proposed Order:

Entry Number	Text to be Sealed
539.	p. 251 (Fig. 16)

13. For the foregoing reasons, Texas Tech respectfully submits that compelling reasons exist to seal the information as identified above and in the Proposed Order.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on September 29, 2023, in Lubbock, Texas.

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6 Eric D. Bentley

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